

In the Matter of)
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Schools and Libraries) CC Docket No. 02-6
Universal Service)
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The Los Angeles Unified School District (=93LAUSD=94) hereby submits its comments in response to the Notice of Proposed Rule Making, FCC 02-8 (=93NPR=94), in the above-captioned proceeding.

LAUSD is the second largest school district in the nation. LAUSD encompasses more than 700 elementary, middle and high schools and serves a student population of approximately 800,000. LAUSD has participated in each funding year of the federal universal service mechanism (the =93E-Rate program=94). In Years 3 and 4, LAUSD centrally prepared and filed applications on behalf of all district schools, rather than through individual schools or school =93clusters=94 as was the practice in Years 1 and 2. Many LAUSD schools have benefited greatly from E-Rate program discounts; others have not yet received discounts under the existing funding priority method. For this reason, LAUSD is interested in the outcome of this proceeding and welcomes the opportunity to comment on the NPR. The Federal Communications Commission (=93Commission=94) seeks comments on several aspects of the E-rate program. For each issue that the District will comment on, the relevant paragraph number is noted below, followed by the issue upon which the Commission seeks comment, and the District's comment.

1. Issue: The Commission seeks comment on whether the Schools and Libraries Division (=93SLD=94) should establish a computerized list of eligible services, accessible on-line, whereby applicants could select the specific product or service as part of their Form 471 application.

2. Comments: LAUSD is concerned that an on-line list of eligible services would limit technology choices and complicate the application process. The technology market is dynamic and ever changing. SLD staff cannot continually update a service list to provide applicants access to the latest, best and most cost effective technology. Consequently, the list

will necessarily limit the availability of new technology or services that should be eligible for funding, but for the fact that the services have not been updated on the master list. The 471 application process already imposes a significant burden upon applicants by requiring applicants to use the specific technologies listed on a Form 471, even if better or cheaper technology becomes available when implementation occurs several months (or even a year) later. This problem will be exacerbated if applicants are required to choose from a predetermined list of eligible services.

While the current service substitution process is supposed to address this issue, the process is far too time-consuming, with responses from the SLD often taking several months. Consequently, it would be more helpful for the Commission to streamline the service substitution process. The on-line list of eligible services would complicate the and needlessly delay the on-line application process. The process has been difficult to navigate in the past. Requiring that applicants attempt to navigate through a maze of selections would only make the application process more difficult.

If the Commission establishes an on-line computerized list of eligible services, there should be a "catch-all" category for services not specifically listed, so the list does not inadvertently limit applicants' ability to take advantage of products and services newly introduced to the marketplace. If an applicant chooses the catchall category, the SLD could further the Commission's goal of preventing fraud and abuse by making those particular choices subject to additional review before funding commitments are made.

B. Paragraph 16

1. Issue: The Commission seeks comment on whether to change the current policy regarding Wide Area Networks (WANs). Under current policy, the SLD will fund the lease of WANs as a Priority One service, but will not fund the building and purchasing of WANs because such infrastructure costs do not fit within the framework of telecommunications or internal connections.

2. Comments: The Commission could eliminate many of the problems and discrepancies in this area, by allowing applicants to procure WANs through lease-to-own agreements of a predetermined period of time. For example, the Commission could establish that the lease-to-purchase agreements must be at

least a three-year agreement, and no more than a five-year agreement. This would be in line with the Commission's Tennessee and Brooklyn decisions. Under such a lease-to-purchase approach, service providers would recoup infrastructure costs within a given period, and the applicant (rather than the service provider) would own the infrastructure at the end of the lease term.

Moreover, a lease-to-purchase requirement would address the Commission's desire to strike a fair and reasonable balance between the desire not to unnecessarily drain available universal service funds by committing large amounts annually to a limited number of applicants, and the desire to ensure that eligible schools and libraries receive supported services Applicants could eventually own their own WANs and there would be less waste of universal funds as applicants would seek less funding for the lease of WANs. In addition, applicant-owned WANs should have the eventual effect of reducing demand for Priority One funding for regular telecommunications service, as applicants move to Voice over IP (or similar) technology for telecommunications needs. Finally, Applicant-owned WANs will eliminate the Commission's concerns about funding infrastructure costs for service providers.

C. Paragraph 21

1. Issue: The Commission seeks comment on whether to broaden eligibility for wireless services, for example, to allow wireless telephone service by school bus drivers or other non-teaching staff of a school, including security personnel.

2. Comments: Non-teaching staff are integral to the provision of educational services. Consequently, the non-teaching staff peripheral uses should be recognized as an integral part of the educational service provided by schools, and therefore should be eligible for funding.

D. Paragraph 22

1. Issue: The Commission seeks comments on whether a change in voice mail eligibility would improve the operation of the program or otherwise further our goals of preventing fraud, waste and abuse and promoting the fair and equitable distribution of the program's benefits.

2. Comments: LAUSD agrees that voice mail and e-mail server similar functions. Consequently, voice mail should be eligible for support under the schools and libraries mechanism. In addition, LAUSD also agrees the application review process would be simplified because an analysis of what

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portion of a school or library's telecommunication costs are related to voice mail applications would be unnecessary.

Furthermore, LAUSD believes that gateways for Voiceover systems (plug in routers, routes within WANs, etc.) should be eligible for discounts.

E. Paragraph 25

1. Issue: The Commission seeks =93comment on whether, if the only Internet access a provider offers is bundled with content but the provider also offers the content separately without Internet access, an applicant may receive full discounts on that Internet access package (including content) if that package provides the most cost-effective Internet access.=94 Under the current rule, if content is bundled with Internet service (for example, by America Online), applicants must subtract the value of content when applying for discounts.

2. Comments: LAUSD would not object to the funding of content bundled with Internet service as long as the content meets state and federal curriculum standards. Otherwise if the funding for content is allowed, this proposal could greatly increase the demand for funding, especially if no limit is placed on the content provided or the cost of the content. Applicants should be required to show that after the Form 470 is posted, no cheaper bids were received for Internet service without non-educational content.

F. Paragraph 29

1. Issue: The Commission seeks comment on whether applicants should certify that the services for which they seek discounts will be used in compliance with the Americans with Disabilities Act (=93ADA=94).

2. Comments: The certification would be redundant. School districts are already required to comply with the ADA, and there are already sufficient mechanisms in place to ensure overall compliance with the ADA. An additional certification regarding compliance, and the inevitable proof that the SLD will require during an audit or performance review, is unnecessary, could be burdensome and a waste of federal and local funds.

G. Paragraph 34

1. Issue: The Commission seeks =93comment on whether [the] rules should specify that service providers must offer applicants the option of either making up-front payments for the full cost of services and being reimbursed

via the BEAR form process, or paying only the non-discounted portion up-front.=94

2. Comments: This option could be very valuable for schools and libraries, because it would allow them greater flexibility in the management of their budgets. Service providers, including those that offer Priority One services, require up-front payments, and then delay reimbursement to applicant school districts for several months. Particularly in the case of Priority One services, an applicant generally is able to obtain those services from only one service provider, and consequently has little choice but to comply with the service provider reimbursement procedures. This creates serious cash flow problems for many schools and libraries and disproportionately affects the most disadvantaged schools and libraries. Accordingly, service providers should be required to offer applicants the choice of billing systems.

H. Paragraph 35

1. Issue: The Commission seeks comment on whether service providers should be required to remit reimbursement payments to applicants within twenty days of having received them from the SLD, and whether service providers should be subject to fines and forfeitures under section 503 and/or other law enforcement.

2. Comment: LAUSD support the formalization of the Commission's previously uncodified policy. It is clear that without an enforcement mechanism, service providers have little incentive to comply with any time limit for providing reimbursements to applicants.

I. Paragraph 36

1. Issue: The Commission seeks comment on whether the proposed twenty-day period for reimbursement (discussed directly above) imposes a significant economic burden on small entity providers, or on whether the remittance process might be modified to minimize such impact.

2. Comment: While LAUSD is sensitive to the interests of small service providers (as defined by Commission Order), small service providers should make only those commitments that they can meet within the reimbursement period. However, the District would not object to a different time limit for small service providers. If there is a different time limit for small service providers, it should be no more than 45 days, and should be conditioned upon explicit agreement with the applicant. In other words, an eligible small service provider should be required to submit an application for the

extended reimbursement period that has first been approved (in writing) by the affected applicant school district.

J. Paragraph 38

1. Issue: The Commission seeks comment on whether to adopt measures to ensure that discounted internal connections are used at the location and for the use specified in the application process for a certain period of time.

In other words, the Commission seeks to eliminate or at least reduce the possibility that some applicant schools will reapply for funding every year, thereby constantly upgrading their LAN equipment, and possibly using the replaced equipment at other school sites that have not been eligible for E-rate funding.

2. Comments: The order suggests a rule limiting transfers for three years from the date of delivery and installation of equipment for internal connections other than cabling, and ten years in the case of cabling.

The time period for internal connections other than cabling should be two years rather than three years. Hardware and software enhancements develop quickly in the dynamic technology environment. LAN upgrades are necessary to provide students with the best educational content available. The upgrades will also result in the best use of the networks made possible by the Commission's discounts. If a two year period for internal connections (other than cabling) is established, the upgraded hardware will actually be installed three years after the hardware has been replaced because of the lag time between funding and actual hardware upgrade.

The Order suggests that if a time limit is imposed, applicants should still be able obtain new equipment to replace universal service-funded equipment that has been in place for less than the specified time periods by trading the existing equipment to its service provider for a credit toward the purchase of the cost of the new discounted equipment or if the applicant can explain the reason for the upgrade and how the upgrade relates to its technical plan or instruction. If a time limit is adopted, this suggestion should also be adopted to allow applicants to take advantage of better technology. By requiring applicants to trade-in equipment, the proposed rule would meet the Commission's goals of reducing waste and streamlining the overall process.

The Commission should not adopt the alternate approach that would deny

internal connections discounts to any entity that has already received discounts on internal connections within a specified period of years regardless of the intended use of the new internal connections.⁼⁹⁴ If applied to all schools within a medium or large district that has obtained funding for some (but not all) schools, this alternative approach would penalize the schools that were not included on a funding application. Even within individual schools, such a rule would force applicants to maximize their funding requests within a short time period, rather than implement strategic technology plans over several years. Budget constraints would force many applicants to forego applying for maximum funding in a one or two year period, because applicants will not have access to the required matching funds in such a short period of time. Conversely, the suggested alternative would inevitably lead to waste in other instances, as applicants will request more funding than needed. In either case, the push to obtain as much funding as possible at once, or to forego funding for a period of years, could create serious cash flow problems for many schools and libraries and would disproportionately affect the most disadvantaged schools and libraries.

K. Paragraph 59

1. Issue: The Commission seeks comment on whether ⁼⁹³to require independent audits of recipients and service providers, at recipients⁼⁹² and service providers⁼⁹² expense, where the Administrator has reason to believe that potentially serious problems exist, or is directed by the Commission. We specifically seek comment on the impact of such a rule on small entities.⁼⁹⁴

2. Comments: This requirement may, as an unintended consequence, discourage applicants from seeking funding in future years. The cost of an independent audit can be prohibitive. Many applicants (such as LAUSD) are annually faced with tight budgets and have difficulty providing the personnel to assist on an audit, let alone cover the expense of an independent audit. This would create serious cash flow problems for many schools and libraries and would disproportionately affect the most disadvantaged schools and libraries. The SLD should provide a reasonable audit schedule that is acceptable to the FCC. The yearly audit schedule that has been implemented causes undue burden on the recipient and wastes resources that are needed to implement the e-rate program locally.

An audit conducted at a service provider⁼⁹²s expense makes more sense. As LAUSD has experienced with recently conducted SLD reviews, service providers have much better access to the records relevant in an audit. If a service provider is required to pay for an audit, the service providers should be

more cooperative in providing requested documentation, as any delays caused by the service provider will result in its added expense.

L. Paragraph 61 (Issue #1)

1. Issue: The Commission seeks comment on whether to =93adopt rules barring applicants, service providers, and others (such as consultants) that engage in willful or repeated failure to comply with program rules from involvement with the program, for a period of years.=94

2. Comments: The Commission should ban or restrict any service provider who has been debarred by any applicant or state or federal agency. If the rules barring participation based on acts or omissions in the E-rate program would apply to both applicants and service providers, any adopted rule should allow for hearings before an independent hearing officer or panel, to afford the affected party due process.

Any such rule should allow for an opportunity by the alleged violating party to propose an acceptable plan to mitigate any failure to comply with program rules, where the failure is unintentional or not fraudulent. Service providers who fail to provide the intended service during the E-Rate program year should be barred from continued service. Notification of ineligibility should be posted .

M. Paragraph 61 (Issue #2)

1. Issue: The Commission also seeks comment on =93whether the prohibition might apply to individuals, so that those responsible for actions that led to the barring of a particular entity do not evade the purpose of the prohibition by joining or forming another eligible entity.=94

2. Comment: Any such effort should be limited to individuals who control or direct an entity=92s E-rate activities. It would be unfair to an applicant or a service provider to lose funding due to an unknowing and unrelated hire of a debarred individual. The names of debarred individuals should be made available to applicant upon request.

N. Paragraph 81

1. Issue: The Commission seeks comment on =93any administrative or procedural rules or policies of the SLD, relating to the schools and libraries support mechanism, that should be revised or eliminated because

they have become outmoded.=94

2. Comment: LAUSD suggests that policy changes be made in the rules and policies regarding the facilities and software that are eligible for discounts. Current rules and policies prohibit discounts for internal wiring of administrative offices that support the schools. The administrative offices are integral to the functioning of the school, the performance of the teachers and the achievement of students. Providing discounts for administrative offices will allow the schools, libraries and offices to communicate quickly and effectively to serve the interests of the students.

With respect to software, LAUSD suggests that rules and policies be liberalized to broaden the applications that are eligible for discounts. For example, to comply with the Children's Internet Protection Act (CIPA) filtering software is legally required to be used on a LAN to prevent student access to inappropriate websites. Since the filtering software is necessary for the use of the LAN it should be eligible for discounts. Furthermore, remote monitoring, firewalls, and cache servers are fundamental to a functioning network, but are not currently eligible for discounts. Similarly, many libraries must purchase or develop automation software so that the schools can access library content over the LAN. Since the automation software is vital to the effective use of the LAN, it should be eligible for discounts.

Furthermore, the rules and policies should be changed to provide discounts on content-based applications. A network is only as good as the content that it carries. While the Commission has accomplished much with the schools and libraries mechanism, it could accomplish infinitely more if it would provide discounts for content.

Finally, the SLD should automatically allow an eighteen (18) month period for large projects.

LAUSD thanks the Commission for this opportunity to comment and looks forward to its continued participation in this proceeding and in the E-Rate program.

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